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C O N F I D E N T I A L SECTION 01 OF 05 SARAJEVO 000500

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SUBJECT: WHAT TO DO ABOUT A PROBLEM CALLED BOSNIA

Classified By: Ambassador Charles English. Reasons 1.4(b) and (d).

11. (C/NF) SUMMARY: Our objectives here are to: 1) maintain Bosnia as a single state; 2) mute the country's potentially explosive ethnic divisions by embedding it in Euro-Atlantic institutions; and, 3) ensure that the state is strong enough to meet its NATO and EU obligations. Unfortunately, Bosnia has been heading in the wrong direction for almost three years now. There has been a sharp and dangerous rise in nationalist rhetoric, reforms have stalled (in some cases there has been backsliding), and Serbs, Bosniaks and Croats have laid out sharply different visions of Bosnia's future as a state. The options for addressing the Bosnia problem are limited. There are risks associated with any course of action designed to resolve it, whether trying to muddle through, handing Bosnia off to the Europeans, or confronting Dodik and Silajdzic. Constitutional reforms that enjoyed broad support across ethnic lines - an agreement that may prove illusive as the holy Grail - could begin the process of providing the state with the legitimacy it requires and now lacks. Done right, constitutional reform could also provide the state with the basic level of autonomy and capacity it requires to begin to meet its NATO and EU requirements, something it currently lacks. Though constitutional reform would change the dynamic for the better, a U.S.-led constitutional reform process would not resolve all Bosnia's problems overnight. There are also considerable challenges and dangers associated with pursuing it. We would need European support, but could find ourselves at odds with the EU over process and substance. By far the biggest challenge would be the Serbs, who have no incentive to engage constructively, and who, without serious pressure or even the threat of sanctions, may remain unyieldingly intransigent. Finally, we would need to set clear parameters for a U.S.-led constitutional reform process and complete it prior to the start of the 2010 general election campaign. We need to understand the risks and challenges going into constitutional reform because, if unsuccessful, it could further inflame the political situation here, perhaps irretrievably. To be stark: a process that failed could bring such pressure as to splinter the state. If we were to play, we must play for keeps. END SUMMARY

Dodik and the Serbs: Taking Apart the State

12. (C) Bosnia has been heading in the wrong direction for almost three years now. The symptoms are easily identifiable: rising nationalist rhetoric; unwillingness on the part of political leaders to engage in genuine dialogue and reach meaningful compromises; a stalled reform process, and in some cases, dangerous backsliding. The greatest

danger is efforts by the RS to de-legitimize and undermine the state. Dodik now regularly raises the prospect of an RS future outside of Bosnia and the possibility of an RS referendum on secession. More recently, he has begun a campaign to roll back previous reforms -- the very reforms that prompted NATO to invite Bosnia to join the Partnership for Peace and the EU to sign a Stabilization and Association Agreement (SAA) with Bosnia. At a minimum, the aim appears to be to restore to the RS the level of autonomy it enjoyed at the end of the 1992-95 war, which would ultimately result in the collapse of the state. Silajdzic's efforts to destabilize the status quo work their effect mostly by provoking anti-state actions by Serbs; his intemperate statements and his all-or-nothing approach to reform have deepened the ethnic divide and played into Dodik's hands.

Dodik and Silajdzic: Tactical Retreats

¶3. (C) For a variety of reasons, we and others in the international community have thus far resisted a direct confrontation with Dodik over his statements and actions. In recent weeks, Dodik has been better behaved, engagingly constructively on Brcko, for example; albeit only after heavy American diplomatic pressure. Our judgment is that this reflects tactical considerations rather than a strategic change of course (Note: Dodik's defiant April 16 interviews, which bookended his meeting the same day with the Ambassador, remain more reflective of Dodik's intentions. End Note) Dodik appears to have realized that OHR's closure, a key objective for him, is unlikely if 5 2 remains unimplemented. This

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makes a confrontation with Dodik less likely in the near-term, though the investigation into his alleged criminal activities, which will open formally this week, may spark one whether he, or we, want it or not. Silajdzic has also refrained from the excesses that have generally characterized his approach to most issues since returning to politics in ¶2006. One reason for the change may be that he is feeling somewhat chastened after taking on the U.S. over Brcko and losing.

The State Lacks Legitimacy

¶4. (C) We must be careful not to allow recent or anticipated progress on the 5 2 agenda to blind us to the underlying problems that plague Bosnia. We cannot embed Bosnia in Euro-Atlantic structures if the state lacks the basic level of autonomy and capacity required to fulfill its Dayton responsibilities, particularly in the face of a concerted campaign by the RS to reverse even minimal post-Dayton state-building reforms. We must also modernize a Dayton state that is weak and structurally incapable of meeting the demands of membership in NATO and the EU. The relative immaturity of Bosnia's democracy, exacerbated by Dodik's almost total control of the RS media, complicates efforts to promote needed reforms. The more fundamental problem, however, is that the state lacks legitimacy among all three ethnic groups: Serbs, Bosniaks, and Croats. The political agendas of their leaders increasingly reflect their respective ethnic group's wartime goals. For the Serbs, it is de facto, perhaps even de jure, separation; for the Bosniaks, it is elimination of the entities and creation of a strong central state; and, for the Croats, it is creation of a third, Croat-majority entity.

No Easy Options

¶5. (C/NF) In the past, when the Bosnian political process has stalled OHR and the international community have had sufficient standing to keep the country moving in the right direction by either bringing the political leaders to heel or imposing reforms. OHR's authorities have atrophied over the

last three years under weak leadership and "Bosnia fatigue" within the international community. Inzko's appointment as HighRep has, in our judgment, driven the final stake through the heart of a "revive OHR strategy" for dealing with Bosnia.

Since the failed attempt to revive OHR's standing and authority in October-November 2007, the international community has essentially sought to manage Bosnia by "muddling through." If anything, this strategy has only emboldened Dodik. In any case, there is a limit to how much nationalist weight, from all sides, the Dayton edifice can sustain, particularly when coupled with concerted efforts by Dodik to deconstruct the state. The danger is that the international community will recognize these limits only after they have been surpassed.

Europe is Not Ready to Lead

16. (C/NF) Though we anticipate transition from OHR to EUSR sometime this year (though not in June), we are not convinced the Europeans are ready to manage post-OHR Bosnia. While Europe may believe that its "pull" is sufficient to overcome Bosnia's deep ethnic divisions or its dysfunctional state structures, the evidence suggests otherwise. Police reform was not a reform at all. The EU response as the Serbs have sought to undo previously required EU reforms, such as TRANSCO, has been surprise followed by docility and bureaucratic hand wringing. Part of the problem is that the EU itself is divided about Bosnia. Among member states, only a handful, most notably the UK, appear to have a clear grasp of the dangers posed by Bosnia's current political dynamics. In addition, the Commission tends to approach Bosnia bureaucratically. It has shown little capacity to marry tactical decisions it must make with regards to Bosnia's EU accession process to our shared strategic goal of maintaining Bosnia as a single state; nor does it appreciate sufficiently how critical state-building is to Bosnia's future viability. In other words, simply "handing off" the Bosnia problem to the EU risks a repeat of the 1991 EU-U.S. dynamics in Bosnia.

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Constitutional Reform: Back on the Agenda

17. (C) The Prud process and success of the U.S.-backed Brcko constitutional amendment have made constitutional reform, once again, a front burner political issue in Bosnia. The state-level House of Representatives (HoR), led by the Prud political parties, is now discussing an initiative to establish a parliamentary body charged with constitutional reform. It would likely take weeks for this to take shape (and it may not - see paragraph eight below), but already Bosniak and Croat political leaders are approaching us about U.S. leadership of a constitutional reform process. There is consensus within the international community that constitutional reform is necessary, and that it should be an evolutionary process, but not there is no agreement about how best to accomplish or support it. Done right, constitutional reform would provide the state with the basic level of autonomy and capacity it requires to meet its NATO and EU requirements, something it currently lacks. More importantly, constitutional reforms that enjoyed broad support across ethnic lines would begin/begin the process of providing the state with legitimacy among a majority of its citizens. Nonetheless, successful constitutional reform would not solve all Bosnia's problems overnight; it is not a panacea.

Dealing With the Serbs

18. (C) Any constitutional reforms that began the process of providing the state with legitimacy and with the tools it required to meet NATO and EU commitments would require

bringing considerable pressure to bear on all three ethnic groups, particularly the Serbs. To begin with, meaningful constitutional reform is at odds with their vision of Bosnia's future. (Note: Dodik has even publicly proclaimed that EU membership is at odds with RS interests, if it means changes to the RS as established by Dayton. End Note) The Serbs see little to gain by giving Bosnia constitutional legitimacy, and they see much to lose in terms of the autonomy and territorial security the RS now enjoys. There is little incentive for the Serbs to come to the table, let alone make compromises. Dodik's hasty retreat from a Prud-inspired initiative on constitutional reform in the House of Peoples underscores the point. Dodik and the Serbs have also objected loudly and frequently to an international role, including an American role, in constitutional reform. They would certainly try hard to prevent it.

The Corruption Wildcard

¶9. (C) Even after we were able to establish consensus around a constitutional reform process and bring everyone, including the Serbs, to the table, we would need to be prepared to address factors outside the process itself that could derail it. The biggest wildcards out there right now are the state-level investigations into alleged corruption by Dodik and Covic. (Note: Dodik's case will enter the investigation stage this week; it could take months to produce an indictment, however. Covic should be indicted this week. End Note) Dodik could respond at any point in the legal process by proclaiming a "threat to the RS" from the state and by pulling Serbs out of state institutions. Certainly the fact that the state is investigating him will dampen his enthusiasm for granting it greater constitutional power. Covic may also be tempted to play the nationalist card in response to the latest investigation into his alleged wrongdoings; though perhaps with less fanfare and bluster than Dodik. If Covic chose to retreat from constructive politics, we would lose one of the most reliable Croat leaders. At some point, Covic could ask the international community to engineer the dismissal of his case in return for his constructive approach on constitutional reform. These are the major, but by no means the only, potential ruts in the road in following a coherent constitutional reform process.

Dealing With Europe

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¶10. (C/NF) Only a U.S.-led constitutional reform process would have any credibility among Bosnians, but without European support and assistance - ideally with real commitment - it would be that much harder for the process to produce the results we need from it. Our need, though, is to have Europe in the process, which means persuading the Europeans to engage constructively in constitutional reform and defining a role for them in it. This will not necessarily be easy. In our past exchanges with Europeans on constitutional reform, our interlocutors have not grasped that constitutional change is first and foremost a political process, which will be decided by political leaders. It is not something that will emerge from a series of seminars and NGO roundtables. In essence, the Europeans have not accepted that a strong guiding hand from the international community is required to manage something as fundamental and potentially divisive as constitutional reform. Nor have they accepted that they must be prepared to define whether specific reforms would meet EU requirements, something essential to any process, and something we may need to be prepared to help them do.

Setting Clear Parameters; Getting the Substance Right

¶11. (C) The Prud-inspired debate, which included Serb calls for the "right of secession" and sparked speculation about another war, demonstrated the potential risks associated with an unconstrained constitutional reform discussion. With out clear parameters a constitutional reform process will degenerate into a nationalist debate over Bosnia's internal boundaries. In addition to taking entity boundaries off the table, we would recommend two additional parameters: 1) Dayton must be the basis for any constitutional reform (i.e., step-by-step/amendments vice a complete new constitution); and, 2) ethnic checks and balances must be maintained but reduced. Serbs, Bosniaks, and Croats would all have reason to be unhappy with one or more of these three parameters, and may well resist accepting them, if not refuse them outright.

¶12. (C) The substantive focus of constitutional reform should include: a) ECHR-related issues; b) division of competencies between the entities and the state; and, c) strengthening the authority of the PM. All these were issues addressed in the April package. We should also explore judicial issues/state supremacy clause and granting revenue raising powers to the state. Both would address critical shortfalls in the state's authority and capacities. We would need to be realistic, however, since it may be politically impossible to tackle all these issues simultaneously. We may need to address them serially. We would also have to be careful with the order in which we tackled them. The Serbs, assuming they engaged at all, would be content with ECHR-related reforms and enlarging parliament; addressing these up front might derail further progress.

Timing and Other Challenges

¶13. (C) We would need any U.S.-driven/led constitutional reform process to conclude by Spring 2010 - just before the informal start of the 2010 general election campaign. With this in mind, and given that it is almost May, we would need to move quickly if we wanted to organize and launch a constitutional reform process, or alternatively leverage whatever develops in the HoR. There are other challenges we would need clear strategies to address. The U.S. retains a lot of influence in Bosnia, and the non-Serb parties want the U.S. involved in constitutional reform, but we do not have a lot of formal leverage over party leaders beyond high-level jawboning. We need to identify the human and financial resources for supporting a U.S. role in constitutional reform, including a Special Negotiator for Constitutional Reform. We should expect to have to put consider pressure on the Serbs to engage, let alone engage constructively. Finally, we will need to manage Bosniak expectations, and make clear that we will only undertake this effort with commitment from them to compromise in a manner that helps bring the Serbs to the table.

Comment

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¶14. (C) There is a limited window of opportunity to pursue constitutional reform in Bosnia, something which, if done right, could begin the process of getting the country on to a self-sustaining path towards NATO and the EU membership. We need to decide whether the U.S. should engage, but we must understand going in that constitutional reform would be very difficult and very risky. A second failure (the defeat of the April 2006 package of U.S.-brokered amendments) would be damaging to us, but it could also further enflame the political situation here, perhaps irretrievably. With this in mind, a U.S.-driven, if not led, constitutional reform process should not be embarked upon lightly. Its success would require expenditure of considerable political capital and pressure by the U.S., perhaps with the Europeans to get them on board, but certainly with the Serbs. The Serbs are responsive to "sticks," but we will have to commit ourselves

to use them (e.g., sanctions) in the event of complete intransigence. We recognize that what we lay out here is a daunting challenge, but we must also consider whether the alternatives to pursuing constitutional reform are sustainable over the long-term given political trends in Bosnia. If we were to play, we must play for keeps.

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